

# Insurance Provisions in Fair & Events Contracts

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## Discussion Overview

- Importance of reviewing contracts
- Types of contracts
- Analyzing contracts from a risk management perspective
- Risk management recommendations

# Contract Basic Provisions

- Parties
- Term
- Termination
- Consideration by both parties

## Importance of Reviewing Contracts from a Risk Management Perspective

- Contracts create new exposures to loss
- May reduce or nullify coverage
- Requires you to meet certain obligations

**Always obtain a legal opinion!**

# County Contract Authorization

- Only the governing body of the county can legally enter into a contract.
- All contracts should be reviewed by the county attorney as to form and compliance prior to execution.

## Types of Contracts

- Lease or Rental Agreements
  - Premises
  - Equipment
  - Vehicles
- Event Agreements
  - Use of premises
  - Performer agreements
  - Vendor agreements
- Interlocal and Mutual Aid Agreements

# Who Should Protect Who?

- When another is providing you a service or goods, they should indemnify and hold you harmless.
- When you provide a service or goods for compensation, you should provide indemnification and hold harmless to the other party.
- When you rent or lease the premise to others, a cross indemnification is probably best.

# Hold Harmless and Indemnification

- Examine the *Hold Harmless and Indemnification Provisions*
  - Included in most written agreements.
  - Protection from risk which you are not in a position to control.
    - Hold Harmless - One party assumes an obligation to protect and defend another and agrees not to take action against them.
    - Indemnification – One party agrees to reimburse another party for the cost of claims arising out of the contract.



# Indemnification and Additional Insured Requirements

- Courts interpret Indemnification Language very narrowly, meaning if the language does not clearly require indemnification, the courts will not enforce it.
- Be careful of using specific dates, activities or services in the indemnification section, as this will limit the indemnification requirement.
- An Additional Insured is only covered by the policy to the extent the contract requires indemnification.

# Analyzing Contracts From a Risk Perspective

- Recognize risks created by contracts which are specific for the event or service.
  - Who is the other party?
  - Is event open to invitees or general public?
  - What is the level of risk to participants?
  - Use of dangerous equipment or autos?
  - Dollar amount of contract is not the determining factor!

# Waiver of Subrogation

- Does the contract contain a *Waiver of Subrogation Provision*?
  - Subrogation – *Insurance carrier's right to recover amount paid from a negligent party*
  - Waiver of Subrogation - *Waives carrier's legal right to recover*
    - Standard insurance language
      - "Carrier shall be subrogated to the extent of payments made"
      - Be sure you have the authority to waive subrogation rights under the terms of your coverage.

# How Much Insurance is Enough?

- Based on the risk a specific activity or service creates. Not all are the same.
  - Contracting with commercial/private vendor
    - Do not qualify for immunities and tort caps available to you.
    - No limit to the amount of damages.
- If other party is indemnifying you, their insurance will need to be enough to pay any claims against them first and have enough left over to pay claims against you.
- Add contractual term that meeting insurance requirements does not limit or waive the obligation to indemnify.

# Dealing with Property

- Review the *Property Provisions*
  - Identify “Property”
    - Who owns?
    - Who sustains financial loss?
    - Is the county responsible for damage to the property?

# Certificates of Insurance

- Simply provides information on the insurance a party has in place on the date the Certificate is issued.
- Provides no contractual rights.
- Pay attention to:
  - Dates
  - Limits
  - Coverages
  - Notes, particularly description of event or service
- Certificates do not identify exclusions of the policy(ies). If you need specific coverage, require it be shown in the notes or require a full copy of the policy instead of a Certificate.
- Forward questionable Certificates for review.

# Risk Management Recommendations

- Develop a contract review procedure with County Attorney and Governing Body.
- Never agree to indemnify someone who is the beneficiary of the contract, they should indemnify you.
- Clarify any insurance required and consider specialty coverages needed.
- Beware of waiving subrogation against other party or their agents.

# Questions?

- Thank You!